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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,258	12/09/2003	James M. Peck	VTN-632	4704

27777 7590 04/16/2007
PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

VARGOT, MATHIEU D

ART UNIT	PAPER NUMBER
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1732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/731,258	Applicant(s) PECK ET AL.	
	Examiner Mathieu D. Vargot	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 27-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/15/04 & 12/19/05</u> | 6) <input type="checkbox"/> Other: ____ |

1.Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26, drawn to a package, classified in class 206, subclass 5.1.
- II. Claims 27-44, drawn to a method of reducing the adherence of a medical device to a package, classified in class 264, subclass 1.1.
- III. Claims 45-48, drawn to a method of hydrating a contact lens, classified in class 264, subclass 2.6.

The inventions are independent or distinct, each from the other because:

Inventions I/II, II/III and I/III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have clearly different modes of operation and effects. The instant package of Group I can be used in other than the methods of Groups II and III and the methods of Groups II and II are also not related and in that they have different effects.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ms. Hope on April 9, 2007 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-26. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 27-48 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

If the particular materials recited in claims 1 and 11-13 constitute tradenames, they should be listed as such.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese document 52-93398.

Japanese –398 discloses the instant package comprising a molded base material comprising an additive, the additive being PVP. Note that the language “for storing

medical devices” as recited in instant claim 1 and the limitations of instant claims 11-13 are submitted to be recitations that would be inherent in the package of Japanese –398 or that would inherently be met in the package of the applied reference.

4. Claims 1-4 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by British Patent Application 2,078,760.

British –760 discloses the instant package comprising a molded base material comprising an additive, the additive being glycerol monostearate. Note that the language “for storing medical devices” as recited in instant claim 1 and the limitations of instant claims 11-13 are submitted to be recitations that would be inherent in the package of British -760 or that would inherently be met in the package of the applied reference.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10 and 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese document 52-93398.

Japanese –398 discloses the basic claimed package as set forth in paragraph 2, supra, the reference essentially lacking a clear teaching of concentration of the PVP, that it would be compounded with other moieties and the surface roughness of the package.

It is respectfully submitted that these aspects would have been well within the skill level of the art dependent on the degree with which one would want to protect the inner wall of the package and the exact properties desired for the wall.

6. Claims 5 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over British Patent Application 2,078,760.

British –760 discloses the basic claimed package as set forth in paragraph 3, *supra*, the reference essentially lacking a clear teaching of concentration of the glycerol monostearate and the inner surface roughness of the package. As noted in paragraph 4, *supra*, these aspects are submitted to be obvious and within the skill level of the art for reasons given in paragraph 4, *supra*—ie, dependent on protection and properties desired for the inner wall.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri. from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on 571 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.


Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
April 10, 2007


Mathieu D. Vargot
Primary Examiner
Art Unit 1732

4/10/07